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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,758	11/12/2003	Michael A. Willen	1481.0100006	4262
26111	7590	11/20/2008	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			VIZVARY, GERALD C	
		ART UNIT	PAPER NUMBER	
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		11/20/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/705,758	WILLEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	GERALD C. VIZVARY	3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 August 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>8/27/2008</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/27/2008 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 8/27/2008 was considered by the examiner.

### ***Official Notice***

3. Examiner notes the following discussion of Official Notice taken from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting

forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Applicant's silence to Examiner's taking of official notice is the same as Applicant not "specifically pointing out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." For these reasons, the following are taken to be admitted prior art: analysis normalized proxy sales history data (claims 4, 12 & 18).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 6, 7, 9, 10, 13, 15, 16 & 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith 2003/004780.

As per claim 1 (Currently Amended), Smith (US 2003/004780 A1 discloses a system for forecasting weather-based demand, comprising: a recombination processor;

wherein: said recombination processor is configured to receive weather metric data; said recombination processor is configured to receive a weather factor relationship knowledgebase;—knowledgebase, wherein the weather factor relationship knowledgebase is different from the weather metric data (“The weather module 103 sends weather requests 209 to the weather information provider. (“Weather information provider 105 translates meteorological data into variables 201 that may be used in the weather module 103.” Smith (US 2003/004780 A1 ¶ [0029]); and

said recombination processor is configured to produce normalized weather factor metric data. (“With respect to data provided by weather information provider 105a and 105b, certain information may be used by weather module 103a and 103b and/or enterprise system 101a and 101b in order to provide specific analysis. Relevant meteorological information should be on a time and geographic scale commensurate with the decision maker's (user's) needs.” Smith (US 2003/004780 A1 ¶ [0035])

As per claim 2 (Original), Smith (US 2003/004780 A1 discloses a system of claim 1, wherein said weather factor relationship knowledgebase is a weather-impact model. (“Scientific and technological advances in the fields of meteorological observations, modeling, forecasting, and use of information have resulted in informational products of known accuracy to various degrees. Such informational products range in time scales from the immediate present to years in advance and from spatial scales from a particular point to continents across the globe. Advances in predictability provide the

potential for businesses to proactively manage their sensitivities to weather." Smith (US 2003/004780 A1 ¶ [0020])

As per claim 5 (Original), Smith (US 2003/004780 A1 discloses a system of claim 4, wherein said normalized proxy sales history data are derived from at least one of old sales history data for a product from an entity, sales history data for said product from a second entity, sales history data for said product from an outside source, sales history data for a category that includes said product, and sales history data for a proxy product that has a similar weather-based demand relationship as said product. ("The weather module may provide information relevant to component business processes of the enterprise system(s) based on meteorological and climatological information. Meteorological information generally refers to predictive or recent weather information, while climatological information generally refers to historical weather information." Smith 2003/004780 ¶ [0017])

As per claim 6 (Original), Smith (US 2003/004780 A1 discloses a system of claim 1, further comprising a volatility scaling processor; wherein: said volatility scaling processor is configured to receive said normalized weather factor metric data; said volatility scaling processor is configured to receive volatility scale factor data; and said volatility scaling processor is configured to produce scaled weather factor metric data. ("Such informational products range in time scales from the immediate present to years in advance and from spatial scales from a particular point to continents across the

globe. Advances in predictability provide the potential for businesses to proactively manage their sensitivities to weather. “Smith 2003/004780 ¶ [0043]) and (“Beyond the forecast time horizon, the weather module may use the climatological database as the sole source of information to calculate the probability of weather events. However, it is also possible that the weather module uses the information provided by the weather information provider to predict whether a threshold is or may be exceeded within the forecast time horizon, and use information in the climatological database to help calculate the probability, or accuracy, of the prediction.” Smith 2003/004780 ¶ [0043])

As per claim 7 (Original), Smith (US 2003/004780 A1 discloses a system of claim 6, further comprising a deaggregation processor; wherein: said deaggregation processor is configured to receive said scaled weather factor metric data; said deaggregation processor is configured to receive deaggregation data; and said deaggregation processor is configured to produce deaggregated weather factor metric data. (“Weather information provider 105 translates meteorological data into variables 201 that may be used in the weather module 103. Enterprise system 101 translates user-defined thresholds and probability criteria 203 for particular actions related to component business processes 113 (FIG. 1) into variables that may be used in the enterprise planning system. The enterprise system 101 then communicates information 205 to weather module 103, which analyzes the data provided and communicates results 207 of the analysis to enterprise planning system 101 in order to incorporate weather information into component business processes. The weather

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module 103 sends weather requests 209 to the weather information provider. Each weather request may be a one time request on an as needed basis, or it may be a request for types of information (precipitation amount, wind direction, wind speed, etc.) that the weather module should receive from the weather information provider on a continued basis. Smith 2003/004780 ¶ [0029])

As per claim 9 (Currently Amended), Smith (US 2003/004780 A1 discloses a method for forecasting weather-based demand, comprising the steps of:

- (1) receiving, at a processor, weather metrics data;
- (2) receiving, at the processor, a weather factor relationship knowledgebase; knowledgebase, wherein the weather factor relationship knowledgebase is different from the weather metric data; and
- (3) forecasting, at the processor, the weather-based demand by using the weather metrics data and the weather factor relationship knowledgebase. (“With respect to data provided by weather information provider 105a and 105b, certain information may be used by weather module 103a and 103b and/or enterprise system 101a and 101b in order to provide specific analysis. Relevant meteorological information should be on a time and geographic scale commensurate with the decision maker's (user's) needs.”

Smith 2003/004780 ¶ [0035])

As per claim 10 (Original), Smith (US 2003/004780 A1 discloses a method of claim 9, wherein the weather factor relationship knowledgebase is a weather-impact model.

("Weather information provider 105 translates meteorological data into variables 201 that may be used in the weather module 103." Smith 2003/004780 ¶ [0029])

As per claim 13 (Original), Smith (US 2003/004780 A1 discloses a method of claim 9, further comprising the step of: scaling the weather based demand. ("Beyond the forecast time horizon, the weather module may use the climatological database as the sole source of information to calculate the probability of weather events. However, it is also possible that the weather module uses the information provided by the weather information provider to predict whether a threshold is or may be exceeded within the forecast time horizon, and use information in the climatological database to help calculate the probability, or accuracy, of the prediction." Smith 2003/004780 ¶ [0043])

As per claim 15 (Currently Amended), Smith (US 2003/004780 A1 discloses a computer program product for forecasting weather-based demand, said computer program product having computer program code means embodied in a computer useable medium, said computer program code means comprising:

a first program code means for receiving, at a processor, weather metrics data;

a second program code means for receiving, at the processor, a weather factor relationship knowledgebase;—knowledgebase, wherein the weather factor relationship knowledgebase is different from the weather metric data; and

a third program code means for forecasting, at the processor, the weather-based demand by using the weather metrics data and the weather factor relationship

knowledgebase. (“With respect to data provided by weather information provider 105a and 105b, certain information may be used by weather module 103a and 103b and/or enterprise system 101a and 101b in order to provide specific analysis. Relevant meteorological information should be on a time and geographic scale commensurate with the decision maker's (user's) needs.” Smith 2003/004780 ¶ [0035])

As per claim 16 (Original), Smith (US 2003/004780 A1 discloses a computer program product of claim 15, wherein the weather factor relationship knowledgebase is a weather-impact model. (“Weather information provider 105 translates meteorological data into variables 201 that may be used in the weather module 103.” Smith 2003/004780 ¶ [0029])

As per claim 19 (Original), Smith (US 2003/004780 A1 discloses a computer program product of claim 15, further comprising: a fourth program code means for scaling the weather-based demand. (“Beyond the forecast time horizon, the weather module may use the climatological database as the sole source of information to calculate the probability of weather events. However, it is also possible that the weather module uses the information provided by the weather information provider to predict whether a threshold is or may be exceeded within the forecast time horizon, and use information in the climatological database to help calculate the probability, or accuracy, of the prediction.” Smith 2003/004780 ¶ [0043])

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 8, 11, 12, 14, 17, 18 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith 2003/004780 in view of Phillips 6,473,084 B1.

As per claim 3 (Original), Smith (US 2003/004780 A1 discloses a system of claim 2.

Smith 2003/004780 fails to show a weather-impact model comprising at least one of an empirical scoring matrix, a weather indices' template, and a proxy model conditions template

Phillips 6,473,084 B1 teaches "In the preferred embodiment of the invention, vectors of forecasts for each individual are used as the columns in a matrix, with each row associated with a particular forecast date." (Phillips 6,473,084 B1 col. 44 lines 54-57).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include empirical scoring matrix, a weather indices' template as taught by Phillips 6,473,084 B1 in the system of Smith US 2003/004780 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 11 & 17 are rejected under a similar rationale.

As per claim 4 (Original), Smith (US 2003/004780 A1 discloses a system of claim 2, Smith 2003/004780 fails to explicitly show the analysis normalized proxy sales history data. The examiner takes official notice that the use of proxy data is well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include analysis normalized proxy sales history data as taught by Phillips 6,473,084 B1 in the system of Smith US 2003/004780 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 12 & 18 are rejected under a similar rationale.

As per claim 8 (Original), Smith (US 2003/004780 A1 discloses a system of claim 1. further comprising a deaggregation processor; wherein:  
said deaggregation processor is configured to receive said normalized weather factor metric data;  
said deaggregation processor is configured to receive deaggregation data; and  
said deaggregation processor is configured to produce deaggregated weather factor metric data. (“Weather information provider 105 translates meteorological data into variables 201 that may be used in the weather module 103. Enterprise system 101

translates user-defined thresholds and probability criteria 203 for particular actions related to component business processes 113 (FIG. 1) into variables that may be used in the enterprise planning system. The enterprise system 101 then communicates information 205 to weather module 103, which analyzes the data provided and communicates results 207 of the analysis to enterprise planning system 101 in order to incorporate weather information into component business processes. The weather module 103 sends weather requests 209 to the weather information provider. Each weather request may be a one time request on an as needed basis, or it may be a request for types of information (precipitation amount, wind direction, wind speed, etc.) that the weather module should receive from the weather information provider on a continued basis. Smith 2003/004780 ¶ [0029])

Smith 2003/004780 fails to explicitly show data normalization.

Phillips 6,473,084 B teaches ("Each user's IB then preferably is divided by the count of the number of items that the user rated during the Assessment Period to generate an "Intensity Weight (IW)". The point values assigned by a user (either for access alone, ratings alone or both) are then multiplied by the Intensity Weight to generate modified points." Phillips 6,473,084 B col. 41 lines 31-35)

It would have been obvious to one of ordinary skill in the art at the time of the invention to include deaggregation processor as taught by Phillips 6,473,084 B1 in the system of Smith US 2003/004780 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same

function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 14 & 20 are rejected under a similar rationale.

As per claim 11 (Original), Smith (US 2003/004780 A1 discloses a system of claim 10. wherein the weather-impact model comprises at least one of an empirical scoring matrix, a weather indices template, and a proxy model conditions template.

Smith 2003/004780 fails to show a weather-impact model comprising at least one of an empirical scoring matrix, a weather indices' template, and a proxy model conditions template

Phillips 6,473,084 B1 teaches "In the preferred embodiment of the invention, vectors of forecasts for each individual are used as the columns in a matrix, with each row associated with a particular forecast date." (Phillips 6,473,084 B1 col. 44 lines 54-57).

As per claim 12 (Original), Smith (US 2003/004780 A1 discloses a method of claim 10, wherein the weather-impact model is derived from an analysis of normalized proxy sales history data. The examiner takes official notice that the use of proxy data is well known in the art.

As per claim 14 (Original), Smith (US 2003/004780 A1 discloses a method of claim 9. Smith 2003/004780: fails to explicitly show deaggregating the weather-based demand. Phillips 6,473,084 teaches "Additional features of the invention include: also displaying on the same graph historical values for other variables; providing the ability to display

the historical data and/or the predicted value for the prediction variable with respect to a different independent variable than in the initial graph; displaying multiple variables on an initial graph in a first view (e.g., a time series view) and then permitting the participant to obtain a view that is a rotation of the first view (e.g., a cross-maturity comparison view “ Phillips 6,473,084 col. 9, lines 39-47).

As per claim 17 (Original), Smith (US 2003/004780 A1 discloses a computer program product of claim 16.

Smith 2003/004780 fails to show a weather-impact model comprising at least one of an empirical scoring matrix, a weather indices' template, and a proxy model conditions template

Phillips 6,473,084 B1 teaches “In the preferred embodiment of the invention, vectors of forecasts for each individual are used as the columns in a matrix, with each row associated with a particular forecast date.” (Phillips 6,473,084 B1 col. 44 lines 54-57).

As per claim 18 (Original), Smith (US 2003/004780 A1 discloses a computer program product of claim 16.

Smith 2003/004780 fails to explicitly show that the weather-impact model is derived from an analysis of normalized proxy sales history data.

The examiner takes official notice that the use of proxy data is well known in the art.

As per claim 20 (Original), Smith (US 2003/004780 A1 discloses a computer program product of claim 15.

a fourth program code means for deaggregating the weather-based demand.

Smith 2003/004780: fails to explicitly show deaggregating the weather-based demand.

Phillips 6,473,084 teaches “Additional features of the invention include: also displaying on the same graph historical values for other variables; providing the ability to display the historical data and/or the predicted value for the prediction variable with respect to a different independent variable than in the initial graph; displaying multiple variables on an initial graph in a first view (e.g., a time series view) and then permitting the participant to obtain a view that is a rotation of the first view (e.g., a cross-maturity comparison view “ Phillips 6,473,084 col. 9, lines 39-47).

### ***Response to Arguments***

4. In the remarks filed on 7/22/2008, Applicant argues that

(1) Smith US 2003/0004780 does not disclose, teach or suggest that the weather factor relationship knowledge base is different from the weather metric data.

In response to this argument, Examiner respectfully refers to Fig. 4 and ¶ [0034] which recites “The weather module 103 may communicate information from weather information provider 105 to enterprise system 101 using information formatted according to the electronic data interchange (EDI) protocol.” And “The data protocol may also require multiple weather information providers 105a, 105b to provide data in a predefined manner to all the weather modules 103a, 103b to integrate the weather

information into a form suitable for incorporation into component business processes 113." And further "The information on accuracy may also be translated by weather module 103 into variables relevant to component business processes 113 and communicated via EI layers 109a and 109b to enterprise system 101." Here the weather factor relationship knowledge bases (105a, 105b) provide data whereupon "weather modules 103a, 103b integrate the weather information into a form suitable for incorporation into component business processes 113." convert the information data into the metric data.

5. The following is prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

World's First Financial Weather Index Acquired by Weather Board of Trade PR Newswire. New York: Apr 16, 2002. discusses the Weather Board of Trade has acquiring the U.S. rights to the NORDIX (normal departure index). The NORDIX is the world's first perpetual, financially traded weather index. It uses a simple daily calculation to track and chart weather trends as it relates to financial impact, and its fair value adjusted daily.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald C. Vizvary whose telephone number is 571-270-3268. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ella Colbert can be reached on 571-272-6741. The fax phone number for the organization where this application or proceeding is assigned is 571-270-4268.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/  
Primary Examiner, Art Unit 3696

Gerald Vizvary  
Patent Examiner, A.U. 3696  
November 17, 2008